

10-2239-cv

*Associated Community Bancorp v. The Travelers Companies*

# MANDATE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

## SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11<sup>th</sup> day of May, two thousand eleven.

PRESENT: RICHARD C. WESLEY,  
GERARD E. LYNCH,  
DENNY CHIN,  
*Circuit Judges.*

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ASSOCIATED COMMUNITY BANCORP, INC., CONNECTICUT COMMUNITY BANK N.A., WESTPORT NATIONAL BANK, DENNIS D. CLARK,

*Plaintiffs-Appellants,*

-v.-

10-2239-cv

THE TRAVELERS COMPANIES, INC., ST. PAUL MERCURY INS. CO.,

*Defendants-Appellees.*

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FOR APPELLANT: MITCHELL J. AUSLANDER (Todd G. Cosenza, Alison R. Levine, *on the brief*), Willkie Farr & Gallagher LLP, New York, NY.

FOR APPELLEE: G. ERIC BRUNSTAD, JR. (Collin O'Connor Udell, Matthew J. Delude, Dechert LLP; Thomas J. Judge, Thompson, Loss & Judge, LLP, *on the brief*), Dechert LLP, Hartford, CT.

MANDATE ISSUED ON 06/02/2011

1 Appeal from the United States District Court for the  
2 District of Connecticut (Hall, J.).  
3

4 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**  
5 **AND DECREED** that the judgment of the district court be  
6 **AFFIRMED.**

7 Plaintiffs-Appellants Associated Community Bancorp,  
8 Inc., Connecticut Community Bank N.A., Westport National  
9 Bank, and Dennis Clark appeal from an April 7, 2010 judgment  
10 dismissing the complaint and a May 28, 2011 order denying  
11 their motion to reopen the judgment and file a third amended  
12 complaint of the United States District Court for the  
13 District of Connecticut (Hall, J.). We assume the parties'  
14 familiarity with the underlying facts and the procedural  
15 history of the case.

16 "We review *de novo* the grant of a motion to dismiss for  
17 failure to state a claim upon which relief can be granted  
18 under Federal Rule of Civil Procedure 12(b)(6)." *Harris v.*  
19 *Mills*, 572 F.3d 66, 71 (2d Cir. 2009). "We consider the  
20 legal sufficiency of the complaint, taking its factual  
21 allegations to be true and drawing all reasonable inferences  
22 in the plaintiff's favor." *Id.* We likewise review "*de novo*  
23 questions as to the ambiguity and meaning of the language of  
24 [an insurance] contract." *State Farm Fire & Cas. Ins. Co.*

1 *v. Sayles*, 289 F.3d 181, 185-86 (2d Cir. 2002); see also *Bd.*  
2 *of Educ. v. St. Paul Fire & Marine Ins. Co.*, 801 A.2d 752,  
3 754 (Conn. 2002) ("[C]onstruction of a contract of insurance  
4 presents a question of law for the court which this court  
5 reviews *de novo*." ) (alteration in the original).

6 Having conducted an independent and *de novo* review of  
7 the record in light of these principles, we affirm the  
8 district court's judgment for substantially the same reasons  
9 stated by the district court in its thorough and  
10 well-reasoned decision.

11 Appellants make one argument that was not considered  
12 below, undoubtedly because it was presented to the district  
13 court only briefly at oral argument, and not presented again  
14 in either Appellants' motion to reopen or in their efforts  
15 to amend the complaint. They argue that the underlying  
16 claims against them fall within a carveback to the policy's  
17 insolvency exclusion because they allege covered acts  
18 "solely in connection with [their] investment on behalf of a  
19 customer in the stock of [an investment company or similar  
20 organization]." Assuming *arguendo* that Appellants raised  
21 this issue below, it is without merit. The carveback  
22 relates to investments in an investment company's "stock" -

1 that is, in its equity. While some of the underlying  
2 complaints refer to "shares," all of them make clear that  
3 the proposed Madoff investments involved creating an  
4 investment account with Madoff, not making an equity  
5 investment in the stock of an investment company or similar  
6 organization.

7 We have considered Appellants' remaining arguments and  
8 find them to be without merit. For the foregoing reasons,  
9 the judgment of the district court is hereby **AFFIRMED**.

10  
11 FOR THE COURT:  
12 Catherine O'Hagan Wolfe, Clerk  
13  
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The block contains a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written over a circular official seal. The seal has a red outer ring with the words "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom. Inside the ring, the words "SECOND CIRCUIT" are written in blue. There are two small blue stars on either side of the text "SECOND CIRCUIT".

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

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This block is a duplicate of the signature block above, featuring the same handwritten signature "Catherine O'Hagan Wolfe" over the same official seal of the United States Court of Appeals, Second Circuit.